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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 385

DISTRICT OF COLUMBIA,

Petitioner,

vs.

HAMILTON NATIONAL BANK OF WASHINGTON,

Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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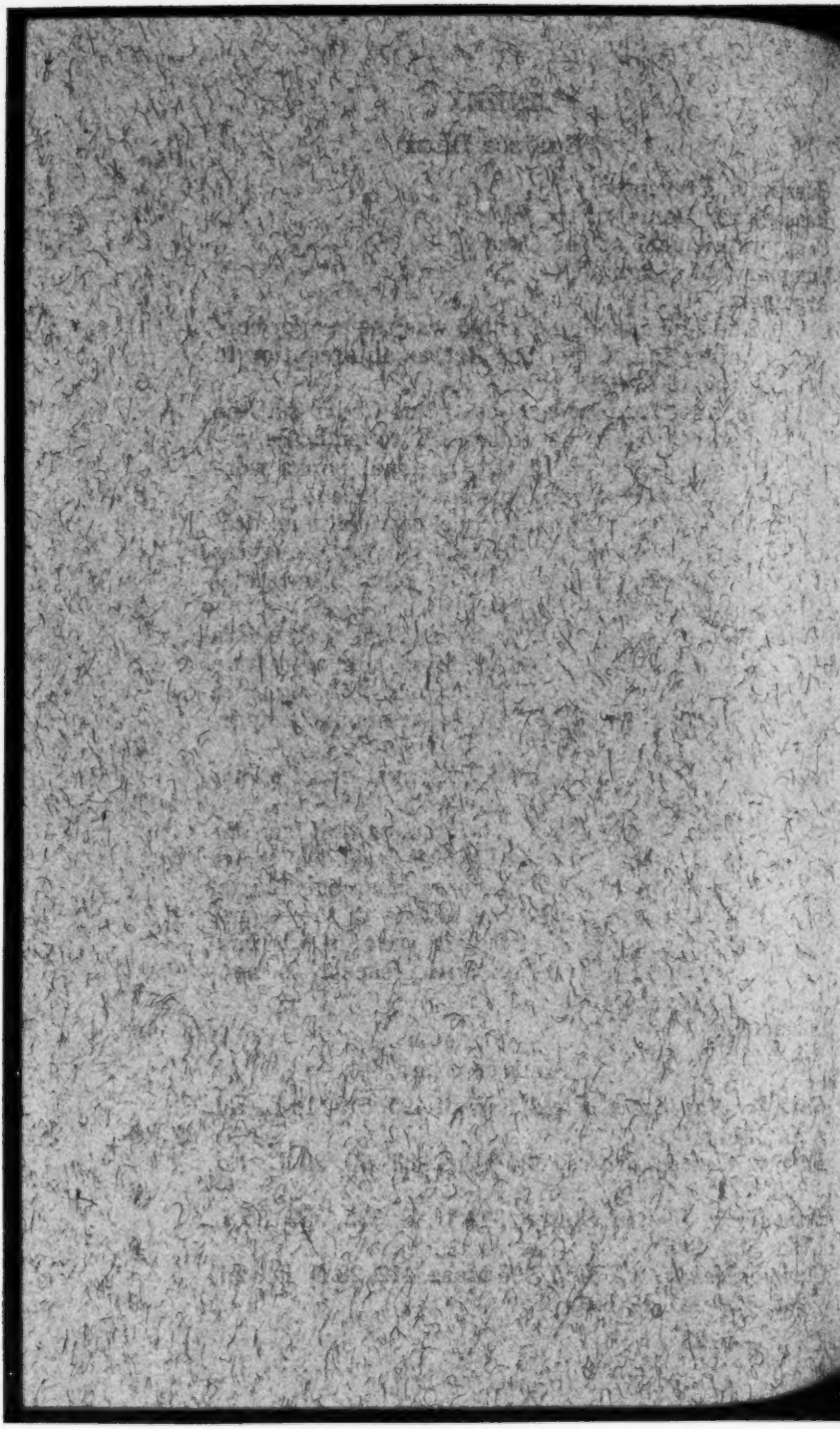

INDEX

Subject Index

	Page
Questions Presented	1
Reasons for Denial of the Writ	2
Counterstatement of the Case	2
Summary of Argument	5
Argument	6
1. The sole question decided was the proper construction of the 1904 Act, as an exception to the 1902 Act	6
2. It is settled by decisions of this Court that the statute may be construed to embrace respondent even though national banks were not doing savings business in 1904	8
3. The statute was properly construed in accordance with the established policy of Congress to protect national banks from discriminatory taxation	9
4. Decisions of this Court establish that where discrimination results from administrative action of taxing authorities, the right to equal treatment is of paramount importance	10
5. There is no is no constitutional question involved in this case	12
6. The decision of the Court below that "an incorporated savings bank" includes banks doing commercial business has a substantial basis in the legislative history of the statute and is supported by forty years of administrative construction with respect to non-national banks	17
Conclusion	18

Table of Cases

Bank for Savings v. *Field*, 3 Wall 495, 513, 18 L. Ed. 207, 211	17, 18
Barr v. *United States*, 324 U. S. 83, 90, 89 L. Ed. 765, 771	8
Browder v. *United States*, 312 U. S. 335, 339, 85 L. Ed. 862, 866	9
Commonwealth v. *Tilley*, 306 Mass. 412, 28 N. E. (2d) 245, 129 A.L.R. 381, 385	9

Page

Davenport Nat. Bank v. *Board of Equalization*, 123 U. S. 83, 86, 31 L. Ed. 94, 96 10
Des Moines National Bank v. *Fairweather*, 283 U. S. 103, 106, 68 L. Ed. 191, 195 .....
Domenech v. *National City Bank*, 294 U. S. 199, 206, 79 L. Ed. 857, 862 10
Evansville National Bank v. *Britton*, 105 U. S. 322, 324, 26 L. Ed. 1053, 1054 10
First National Bank v. *Anderson*, 269 U. S. 341, 347, 70 L. Ed. 295, 302 9
First National Bank v. *Hartford*, 273 U. S. 548, 551, 71 L. Ed. 767, 770 9
Heiner v. *Donnan*, 285 U. S. 312, 326, 76 L. Ed. 772, 779 16
Huntington v. *National Savings Bank*, 96 U. S. 388, 24 L. Ed. 777 17
Iowa-Des Moines National Bank v. *Bennett*, 284 U. S. 239, 247, 76 L. Ed. 265, 273 11
Lappin v. *District of Columbia*, 22 App. D. C. 68 15
Mercantile Bank of New York v. *New York*, 121 U. S. 138, 30 L. Ed. 895 10
Merchants' National Bank v. *Richmond*, 256 U. S. 635, 638, 65 L. Ed. 1135, 1138 9
Neild v. *District of Columbia*, 71 App. D. C. 306, 110 F. 2d 246 ..... 15, 16
Newman v. *Arthur*, 109 U. S. 132, 138, 27 L. Ed. 883, 885 9
Owensboro National Bank v. *Owensboro*, 173 U. S. 664, 667, 43 L. Ed. 850, 852 9
Pirkey Bros. v. *Commonwealth*, 134 Va. 713, 114 S. E. 764, 29 A.L.R. 1290 9
Puerto Rico v. *Shell Co.*, 302 U. S. 253, 257, 82 L. Ed. 235, 240 9
Re Fox Films Corp., 295 Pa. 461, 145 A. 514, 64 A.L.R. 499 9
Sioux City Bridge Co. v. *Dakota County, Nebraska*, 260 U. S. 441, 447, 67 L. Ed. 340, 343 11
Steward Machine Co. v. *Davis*, 301 U. S. 548, 584, 81 L. Ed. 1279, 1289 ..... 15, 16

OTHER REFERENCES

Michie, on Banks and Banking, Volume 8, Ch. 16, § 1 17

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RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

The brief of petitioner correctly cites the two opinions of the United States Court of Appeals for the District of Columbia Circuit and the opinions of the Board of Tax Appeals for the District of Columbia. In the Appendix of petitioner's brief, pages 29 to 37, there is set out the first opinion of the United States Court of Appeals, which states the law and basis of the decision in this case.

Questions Presented

Neither the petition nor the brief in support thereof has accurately stated the question involved in this case. The

sole question presented is one of statutory construction. That question is whether the United States Court of Appeals properly decided that the 1904 Act providing for a lower basis of taxation on "incorporated savings banks" was applicable to respondent as a national bank doing savings bank business, along with commercial business, to the same extent that the statute has been applied during forty years of administrative construction to non-national banks doing savings bank business, along with commercial business.

Reasons for Denial of the Writ

1. The statute was construed in the light of principles settled and established by applicable decisions of this Court.

2. The construction of the statute adopted by the Court below gave full weight to the overall policy of Congress protecting national banks from discriminatory taxation, as expressed in Section 5219 of the Revised Statutes.

3. No question of constitutionality was presented, argued or decided by the Court below, and such reference to the Constitution in the opinion was merely in aid of the stated statutory construction.

4. The question of taxation of banks in the District of Columbia is one of purely local concern, not affecting the national welfare, and concerning which the United States Court of Appeals for the District of Columbia Circuit is competent to deal as a court of last resort.

Counterstatement of the Case

This counterstatement is necessary because petitioner in its discussion of the second appeal beginning on page 9 has misunderstood and erroneously stated the basis of the

Court's action in the second appeal, particularly in the first full paragraph on page 10, where petitioner states: "the decision of the Court below rejected the contention of the District Government that Congress had power to classify national banks for tax under Sec. 1701 at a higher rate of tax than that provided for incorporated savings banks under Sec. 1703." Petitioner also states that the decision of the Court was based upon the assumption "that (1) Congress did not intend national banks to be taxed under Sec. 1701 (R. 111, 112)." The Court did not construe the 1902 Act, sometimes referred to as Sec. 1701. The Court properly found that the 1902 Act, prior to 1904, was applicable to every bank doing business in the District of Columbia, that is to say, both national banks and state banks. Therefore, the fact that national banks were specifically mentioned in the 1902 Act as such and that state banks were included under the description of "other incorporated banks" was of no consequence, because all banks were within the purview of the 1902 Act. For this reason, the only question to be decided was the scope and application of the 1904 Act, namely, Section 1703. The Court further pointed out that Congress had not specifically defined or classified an incorporated savings bank and that the application of the statute had depended solely upon administrative interpretation and construction.[1]

The basis of the Court's decision was that the "administrative interpretation of the 1904 amendment as applicable

[1] "Plainly the state banks were mentioned as such in the 1902 Act, now § 1701, just as national banks were mentioned and, had the 1904 amendment not been enacted, state banks would have been subjected to the tax of § 1701 along with national banks.

"Congress has said nothing more, except that in 1904 it provided for a lower rate of taxation on 'incorporated savings banks paying interest to their depositors'. The 1904 amendment does not say that only a state-chartered bank can be considered to be a 'savings bank'. Classification of state banks as 'savings banks' has been done only administratively" (R. 112).

to commercial banks with substantial savings departments, which began immediately and has since continued" (R. 111) had a substantial statutory basis. Therefore, the Court found that the Board of Tax Appeals was justified in holding that state-chartered banks doing both a savings and commercial business were properly taxable under Section 1703 as incorporated savings banks, and affirmed the orders of the Board of Tax Appeals with respect to non-national banks.

With respect to respondent, the Court applied the findings and tests used by the Board of Tax Appeals to identify a savings bank and found that all of them applied to respondent, except the fact that respondent was a national bank while the other banks operated under state charters. The Court further held that there was no statutory basis for denying respondent administrative classification as a savings bank for the sole reason that it derived its authority from the federal rather than a state government. The Court decided that any other construction of the statute would be contrary to the general purpose and policy of Congress as expressed in Section 5219 of the Revised Statutes, 12 U. S. C., Section 548, protecting national banks from discriminatory taxation by the several states. The Court apparently concluded that if Congress had intended to act contrary to this general policy with respect to national banks in the District of Columbia, such intention would have been expressed in unmistakable and unequivocal language.

At that point the Court went further to reinforce its opinion by stating that "Even if the language of the two Code provisions involved permitted the interpretation which the Board has given it, such a construction which obviously results in oppressive discrimination against national banks would render the two sections unconstitutional," in violation of the Fifth Amendment (R. 112). Thereafter, the Court indicated its view that the Fifth Amendment, as

applied to the District of Columbia, implies equal protection of the laws. This statement was made after the Court had decided that the language of the statute did not permit the construction given it by the Board of Tax Appeals. No provision of the statute was actually held to be unconstitutional.

Judge Edgerton, in his dissenting opinion, stated that the specific mention of national banks in the 1902 Act prevented them from being taxed under the 1904 amendment. He also pointed out that there had been no compliance with 28 U. S. C. 2403 where the constitutionality of an Act of Congress is brought in question. Judge Edgerton did not attempt to reconcile his dissent with his concurrence in the opinion of the Court on the first appeal.

Summary of Argument

1. The legislative history of the 1902 Act, its construction prior to the 1904 Act, and the language of the statute itself show that it includes every incorporated bank doing business in the District of Columbia. The sole question decided was the extent of the exception thereto created by the 1904 Act.

2. Petitioner and the non-national banks have contended that respondent as a national bank is not eligible for classification as a savings bank, because it was not engaged in such business when the 1904 Act was passed. It is settled by applicable decisions of this Court that a statute is to be construed to cover new situations within its terms, even though it cannot be said that the particular situation was within the contemplation of Congress at the time of enactment.

3. It is settled under numerous decisions of this Court that it is the established policy of Congress to protect national banks from discriminatory taxation. The Court below was justified in construing the statute in a manner

that would prevent discrimination against respondent as a national bank.

4. It is settled by decisions of this Court that where discrimination results from administrative action of the taxing authorities, this Court will require equal treatment even though the statute may authorize a higher basis of taxation.

5. The first opinion of the Court below which stated the law of the case, shows clearly that the matter before the Court was "the validity of an administrative action" (Pet. Brief, p. 34), and not the power of Congress to create a specific classification of savings banks as banks having state charters. There is no constitutional question involved in this case.

6. The decision below has a substantial basis in the language of the statute, its legislative history, and the administrative construction of many years.

ARGUMENT

1. The sole question decided was the proper construction of the 1904 Act, as an exception to the 1902 Act.

The language of the 1902 Act makes its provisions applicable to "each national bank * * * and all other incorporated banks and trust companies in the District of Columbia." In the two-year period prior to the enactment of the 1904 Act, this statute was deemed to apply to incorporated savings banks. The Washington Savings Bank sought relief from this excessive taxation (R. 83, 84), and its effort resulted in the 1904 Act.

The language of the 1904 Act is not expressly stated to be an exception to the application of the 1902 Act, but it has always been applied as such. In other words, a bank that qualified under the 1904 Act was held to be exempt from taxation under the 1902 Act. The definition and extent

of this excepted class of banks is set forth in the following language: "incorporated savings banks paying interest to their depositors." By reference back to the 1902 Act, it will be seen that the application of that Act is to national banks and *all other incorporated* banks and trust companies. From the above it is clear that a national bank was considered as a form of an incorporated bank; otherwise, the use of the word *other* would have no significance. Therefore, the exception created by the 1904 Act was applicable to each of the types of banks described in the 1902 Act, provided that each was a savings bank paying interest to its depositors.

Administrative construction over the many years since the enactment of these statutes has been to apply Section 1701 to national banks and trust companies and Section 1703 to all state-chartered banks other than trust companies, without reference to the extent or nature of their savings bank business.

In its first opinion, the Court of Appeals required that the administrative classification be related to savings deposits. Thereafter, on further hearing, the Board of Tax Appeals found that all of the state-chartered banks were doing a mixture of savings and commercial business; that the banks which were classified as savings banks at the time of the passage of the 1904 Act were doing a similar type of business; and that in view of the administrative construction of long standing, those banks which were doing a mixture of both savings and commercial business were to be considered as savings banks. Therefore, by administrative construction, approved by both the Board of Tax Appeals and the Court of Appeals, the term "incorporated savings banks" includes banks doing a mixture of both savings and commercial business.

The question decided by the Court below was whether, in this situation, respondent was to be denied a similar ad-

ministrative classification because of its national charter. The Court found upon the application of objective tests as to the type of business done, there is no valid distinction between respondent with its substantial savings business and state-chartered banks receiving the benefit of Section 1703.

It is submitted that the reasoning and conclusions of the Court in this respect are amply justified by the record.

Petitioner at page 18 of its brief makes the following statement: "The Court apparently concluded that Congress did not intend to tax national banks under Sec. 1701 subsequent to the amendment of 1904". There is nothing in either opinion of the Court to sustain this statement. In fact, the Court specifically found that the exclusion of national banks from the benefit of Section 1703 was proper until national banks were authorized and actually engaged in savings bank business (R. 111).[2] The entire argument of petitioner on this phase of the case rests upon its false premise as to the nature of the decision of the Court below.

2. It is settled by decisions of this Court that the statute may be construed to embrace respondent even though national banks were not doing savings bank business in 1904.

> "But if Congress has made a choice of language which fairly brings a given situation within a statute, it is unimportant that the particular application may not have been contemplated by the legislature." *Barr* v. *United States,* 324 U. S. 83, 90, 89 L. Ed. 765, 771.
>
> "It is necessary to go further and to say that if the acquisition of that insular dependency had been foreseen, Congress would have so varied its comprehen-

[2] "Although in 1904, national banks did not receive savings deposits and so were perhaps properly excluded by assessing officials from the category of incorporated savings banks, such exclusion is not now justifiable because the reason for it no longer exists."

sive language as to exclude it from the operation of the act." *Puerto Rico* v. *Shell Co.*, 302 U. S. 253, 257, 82 L. Ed. 235, 240.

"Old laws apply to changed situations. The reach of the act is not sustained or opposed by the fact that it is sought to bring new situations under its terms. While a statute speaks from its enactment, even a criminal statute embraces everything which subsequently falls within its scope". *Browder* v. *United States*, 312 U. S. 335, 339, 85 L. Ed. 862, 866.

See also *Newman* v. *Arthur*, 109 U. S. 132, 138, 27 L. Ed. 883, 885; *Pirkey Bros.* v. *Commonwealth*, 134 Va. 713, 114 S. E. 764, 29 A.L.R. 1290; *Re Fox Films Corp.*, 295 Pa. 461, 145 A. 514, 64 A.L.R. 499; *Commonwealth* v. *Tilley*, 306 Mass. 412, 28 N. E. (2d) 245, 129 A.L.R. 381, 385.

3. The statute was properly construed in accordance with the established policy of Congress to protect national banks from discriminatory taxation.

National banks are agencies of the United States created under its laws to promote its fiscal policies and as such may be taxed only in strict conformity with the consent of Congress. *Des Moines National Bank* v. *Fairweather*, 283 U. S. 103, 106, 68 L. Ed. 191, 195; *First National Bank* v. *Anderson*, 269 U. S. 341, 347, 70 L. Ed. 295, 302; *Owensboro National Bank* v. *Owensboro*, 173 U. S. 664, 667, 43 L. Ed. 850, 852. The purpose of R. S. 5219 is to forbid every form of discrimination in taxation of national banks and to assure national banks of an equal position in competition with moneyed capital in the several states. *Merchants' National Bank* v. *Richmond*, 256 U. S. 635, 638, 65 L. Ed. 1135, 1138.

Discrimination may result from the manner in which a statute is applied and enforced as well as the language of the statute itself. *First National Bank* v. *Hartford*, 273 U. S. 548, 551, 71 L. Ed. 767, 770. Discrimination may re-

sult from unequal allowance of deductions as well as in the basis of taxation. *Evansville National Bank* v. *Britton*, 105 U. S. 322, 324, 26 L. Ed. 1053, 1054.

While there are some cases that seem to hold that the statute is not violated if special exemptions not affecting moneyed capital generally, are applicable to savings banks, *Mercantile Bank of New York* v. *New York*, 121 U. S. 138, 30 L. Ed. 895; *Davenport Nat. Bank* v. *Board of Equalization*, 123 U. S. 83, 86, 31 L. Ed. 94, 96, it is clear upon examination that the savings banks there referred to were of an entirely different character from the state banks doing business in the District of Columbia. In the last-cited case, these exemptions on savings banks are said to be not unreasonable because "the institutions generally established under that name are intended for the deposits of the small savings and accumulations of the industrious and thrifty; that to promote their growth and progress is the obvious interest and manifest policy of the state;"

The sweeping character of the policy reflected in R. S. 5219 is indicated by the fact that it has been construed broadly enough to include Puerto Rico, although there is nothing in the language of the statute that would indicate that fact. *Domenech* v. *National City Bank*, 294 U. S. 199, 206, 79 L. Ed. 857, 862. National banks doing business in the District of Columbia are not to be regarded as being beyond the protection of the policy set forth in R. S. 5219.

4. Decisions of this Court establish that where discrimination results from administrative action of taxing authorities, the right to equal treatment is of paramount importance.

The decision of the Court below requires that respondent be given equal treatment. The principle that equal treatment is of paramount importance in cases of discrimination

is established by applicable decisions of this Court, such as:

Mr. Chief Justice Taft, in *Sioux City Bridge Co.* v. *Dakota County, Nebraska,* 260 U. S. 441, 447, 67 L. Ed. 340, 343:

> "The dilemma presented by a case where one or a few of a class of taxpayers are assessed at 100 per cent of the value of their property, in accord with a constitutional or statutory requirement, and the rest of the class are intentionally assessed at a much lower percentage, in violation of the law, has been often dealt with by courts, and there has been a conflict of view as to what should be done. * * * The conclusion in these and other Federal authorities is that such a result as that reached by the supreme court of Nebraska is to deny the injured taxpayer any remedy at all, because it is utterly impossible for him, by any judicial proceeding, to secure an increase in the assessment of the great mass of underassessed property in the taxing district. This court holds that the right of the taxpayer whose property alone is taxed at 100 per cent of its true value is to have his assessment reduced to the percentage of that value at which others are taxed, even though this is a departure from the requirement of statute. The conclusion is based on the principle that where it is impossible to secure both the standards of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law."

Mr. Justice Brandeis, in *Iowa-Des Moines National Bank* v. *Bennett,* 284 U. S. 239, 247, 76 L. Ed. 265, 273:

> "*Third.* The fact that the State may still have power to equalize the treatment of the petitioners and the competing domestic corporations by compelling the latter to pay hereafter the unpaid balance of the amounts assessed against them in 1919, 1920, 1921 and 1922 is not material. The petitioners' rights were violated, and the causes of action arose, when taxes at the lower rate were collected from their competitors.

> It may be assumed that all ground for a claim for refund would have fallen if the State, promptly upon discovery of the discrimination, had removed it by collecting the additional taxes from the favored competitors. By such collection the petitioners' grievances would have been redressed; for these are not primarily overassessment. The right invoked is that to equal treatment; and such treatment will be attained if either their competitors' taxes are increased or their own reduced. But it is well settled that a taxpayer who has been subjected to discriminatory taxation through the favoring of others in violation of federal law, cannot be required himself to assume the burden of seeking an increase of the taxes which the others should have paid."

5. There is no constitutional question involved in this case.

The underlying principles upon which this case was decided were set forth in the original opinion. The Court there said (Pet. Brief p. 33):

> "But we are not considering the validity of an act of Congress and need not go into the question whether Congress itself could provide a differential in tax for savings banks and in the same enactment define a savings bank as a bank with a state charter. The matter before us is the validity of an administrative action, and the scope of the power of classification by an administrator under a statute is obviously much less broad than is the power of the Congress in the first instance."

The Court further held that an administrative officer could not "restrict a statutory term such as 'incorporated savings banks' by a definition having no relation to savings deposits or accounts" (Pet. Brief, p. 34). Administrative classification of banks as savings banks, simply because they were organized under state charters was held to be im-

proper and arbitrary. The decision did not in any way imply that the statute was unconstitutional.

In the decision on the second appeal, the Court followed with great care the general principles laid down in the first decision. It applied those principles to the findings of the Board with respect to non-national banks and concluded that by application of the same tests to national banks, respondent was a savings bank within the meaning of the statute. The Court further pointed out that the administrative construction of the statute was "at war with the clear Congressional purpose expressed in Section 5219 of the Revised Statutes".

As a further and final argument against the construction of the statute by the Board with respect to the national banks, the Court expressed its view as to the constitutional status of the Board's ruling. Its comment was predicated upon this hypothetical condition which it had previously ruled was untenable, namely, "Even if the language of the two Code provisions involved permitted the interpretation which the Board has given it, such a construction which obviously results in oppressive discrimination against national banks would render the two sections unconstitutional." (R. 112.) Petitioner makes much of this comment and the succeeding paragraph, and relies to a great extent upon this asserted constitutional ruling as a basis for the granting of certiorari herein. It cannot be emphasized too greatly that the Court *did not rule that the statute was unconstitutional.* So far as the Court's decision is concerned, these two paragraphs could be stricken from the opinion and the ruling would remain the same. The substance of the ruling was one of construction of the statute, and the reference to the Constitution was merely an additional and unnecessary reason to support that construction.

It is to be noted that petitioner makes no point and little argument that the construction of the statute by the Court

was erroneous. If the Court's construction of the statute is sound, then upon review, the only function this Court would perform would be editorial in nature, to remove an unnecessary portion of the opinion, which petitioner contends goes beyond existing law. Nothing of substance would be accomplished by such action.

The underlying argument of petitioner is not that the decision of the Court was wrong in its construction of the statute, but that "the opinion of the Court below contains far-reaching but erroneous criteria of constitutionality to be applied to acts of the Federal Congress" (Pet. Brief, p. 21). In the third reason given for the granting of the writ, petitioner asserts that "The question presented in this case is applicable * * * to every statute enacted by the Federal Congress in the exercise of its exclusive jurisdiction to legislate for the District of Columbia" (Pet. Brief, p. 13). By this argument, petitioner seeks review not because of what was done in this case but because the alleged erroneous criteria of constitutionality may be applied in some other case. Even if petitioner's premises were sound, it would be time enough to consider the *erroneous criteria* when they are actually applied in a particular case. The statute has not been held to be unconstitutional in this case and the alleged erroneous criteria have not been given application. Therefore, no real basis has been furnished for review at this time.

Up to this point we have assumed *arguendo*, that there was some basis for petitioner's criticism of the language of the opinion with respect to constitutionality. Let us analyze the opinion further to see the real point involved. The Court stated that the construction of the statute by the Board would be in violation of the Fifth Amendment "and the equal protection of the laws implied therein for the benefit of the inhabitants of the District of Columbia" (R. 112). It is to be noted that this construction of the Fifth

Amendment is limited to "inhabitants of the District of Columbia". In effect, the Court has stated that in its opinion, Congress acts as a local legislature for the District of Columbia and its inhabitants have the same assurances of equal protection of the laws through the Fifth Amendment as the inhabitants of the several states through the Fourteenth Amendment. The cases which petitioner has cited to the effect that equal protection of the laws under the Fourteenth Amendment is not applicable to legislation by the Congress, have had to do with national legislation. They did not relate to purely local legislation for the District of Columbia as in the present case. Yet in these cases affecting national legislation, this Court has carefully considered the record as to whether equality of treatment was substantially preserved. For instance, in *Steward Machine Co.* v. *Davis,* 301 U. S. 548, 584, 81 L. Ed. 1279, 1289, cited by petitioner as a leading case, it is finally concluded: "The classifications and exemptions would therefore be upheld if they had been adopted by a state and the provisions of the Fourteenth Amendment were involved to annul them."

Finally, petitioner claims a conflict of the language of the present decision with the opinion of the Court of Appeals in *Neild* v. *District of Columbia,* 71 App. D. C. 306, 110 F. 2d 246. The Court of Appeals there referred to *Lappin* v. *District of Columbia,* 22 App. D. C. 68, as stating too directly and vigorously that the equal protection clause should be regarded as being applicable in the District of Columbia. In words of great caution, the Court made this analysis of the law:

> "The Fourteenth Amendment is not applicable in the District of Columbia. To the extent that the privilege of 'equal protection of the laws' exists in the District of Columbia it depends upon the due process clause of the Fifth Amendment and other provisions of the Constitution which are applicable to the federal gov-

> ernment. In a sense it may be said that every citizen is entitled to the equal protection of the laws as they may be adopted and administered by the federal government throughout the land. But this privilege does not depend upon or arise out of the Fourteenth Amendment. The nature and purpose of the federal government require that it be 'subject to restraints less narrow and confining' than the individual states. This is particularly true concerning the area in which the national capital is located. If the decision in Lappin *v.* District of Columbia, and the dicta in Sims *v.* Rives, and Wood *v.* United States, are in conflict with the foregoing statement they are, to that extent, hereby repudiated."

Yet after the Court had made this statement, it applied the ultimate test in the same way that this Court did in *Steward Machine Co.* v. *Davis, supra,* holding: "Thus, even if we were required to decide the present case under the equal protection clause of the Fourteenth Amendment, it would be necessary for us to uphold the decision of the lower court."

The alleged conflict between this case and *Neild* v. *District of Columbia, supra,* is one of words, and as we have previously pointed out, in this case the statute was construed and was not held to have been unconstitutional. There is *no irreconcilable conflict in the decisions* in these two cases. Moreover, it was stated by this Court in *Heiner* v. *Donnan,* 285 U. S. 312, 326, 76 L. Ed. 772, 779: "That a federal statute passed under the taxing power may be so arbitrary and capricious as to cause it to fall before the due process of law clause of the Fifth Amendment is settled" and under this principle, the Court has always discussed the discriminatory nature and effect of a statute. The discriminations that the Court found to be present in the administration of this statute are such that they would, if necessary, fall before the due process of law clause of the Fifth Amendment.

6. The decision of the Court below that "an incorporated savings bank" includes banks doing commercial business has a substantial basis in the legislative history of the statute and is supported by forty years of administrative construction with respect to non-national banks.

Long ago in *Bank for Savings* v. *Field,* 3 Wall 495, 513, 18 L. Ed. 207, 211, this Court classified banks as commercial banks and banks for savings. With respect to the latter class, the Court quoted a definition as follows:

> "'Banks for savings', says McCulloch, 'are banks established for the receipt of small sums deposited by the poorer class of persons for accumulation at interest'. p. 146."

The general description of a savings bank at that time is shown by the following quotation from Michie, on *Banks and Banking,* volume 8, Ch. 16, § 1:

> "Savings banks are what their name indicates, banks of deposit for the accumulation of small savings belonging to the industrious and thrifty, whose trustees sometimes give their services gratuitously, and for which the state prescribes the investment. A 'savings bank' is not a bank in the commercial sense of that word, nor is it, however, for all purposes, a charitable society, but under certain instances, it has been held to be a business corporation. All the funds and investments are held exclusively for the benefit of the depositors, and the corporation is the mere agency for managing the moneys."

In the original opinion in this case (Pet. Brief p. 34) the Court of Appeals pointed out that this Court in 1878 in *Huntington* v. *National Savings Bank,* 96 U. S. 388, 24 L. Ed. 777, thus described a savings bank, and stated that the definition applied "until recently".

The record in the present case shows that at the time of the enactment of the 1904 Act, all of the state-chartered

banks which received the benefit of that enactment were doing a mixture of commercial and savings business. There were no banks doing a purely savings business of the type described in *Bank for Savings* v. *Field, supra.* Consequently, the Board of Tax Appeals held, and the Court below affirmed, that the definition of an incorporated savings bank included banks that were doing both commercial and savings business. Therefore, there was no justification for the attempt of petitioner, after forty years of administrative construction to the contrary, to restrict the application of the statute to the type of bank described in *Bank for Savings* v. *Field, supra.* In fact, the effect of such construction would have nullified the statute, as petitioner found that there was no savings bank in the District of Columbia within such a definition.

In the circumstances outlined above, there was a substantial basis for the construction of the statute adopted by the Court of Appeals. The sole test of qualification under the 1904 Act was whether the bank did savings business, paying interest to its depositors, and not whether it restricted itself to that type of business. Under such a definition, respondent likewise qualifies as a savings bank. The sole reason for excluding respondent from the benefit of this provision was its national charter. The Court below properly found that such discrimination against respondent was arbitrary and had no basis in the statute itself.

For the foregoing reasons, it is submitted that the conclusion of the Court below is supported by the record, and there is no need or occasion for review by this Court.

Conclusion

The decision of the Court below is in accord with principles settled and established by applicable decisions of this Court and is in conformity with the overall policy of Congress protecting national banks from discriminatory taxa-

tion, as expressed in R. S. 5219. No question of constitutionality was decided by the Court below. The statute under consideration is one of purely local concern, not affecting the national welfare. The decision below was thoroughly considered and review by this Court is not warranted. Therefore, it is respectfully submitted that the petition for writ of certiorari should be denied.

Respectfully submitted,

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